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Anytime Plumbing Co. and Chicago Journeymen Plumbers' Local Union 130, U.A. Case 13-CA-33484

March 15, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

Upon a charge and amended charge filed by the Union on June 19 and July 21, 1995, the General Counsel of the National Labor Relations Board issued a complaint on October 24, 1995, against Anytime Plumbing Co., the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charge, amended charge,¹ and complaint, the Respondent failed to file an answer.

On January 29, 1996, the General Counsel filed a Motion for Summary Judgment with the Board. On January 31, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated November 24, 1995, notified the Respondent that unless an answer were received by December 6, 1995, a Motion for Summary Judgment would be filed.

¹ The General Counsel served a copy of the charge and amended charge on the Respondent by registered letter through the United States Postal Service. This constitutes proper service notwithstanding the fact that a signed return receipt has not been received by the Region. *General Marine Transport Corp.*, 238 NLRB 1372 (1978). Furthermore, failure or refusal to accept service cannot defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation with an office and place of business in Chicago, Illinois, has been engaged as a plumbing contractor in the construction industry doing residential construction. During the past calendar year, the Respondent purchased and received at its Chicago, Illinois facility goods valued in excess of \$50,000 from other enterprises, including S&G Supply, located within the State of Illinois, which other enterprises had received these goods directly from points outside the State of Illinois. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About December 1994 and February 1995, the Respondent promised employees benefits, including higher wages, a gas allowance, and insurance, if the employees rejected the Union as their bargaining representative.

About January 1995, the Respondent created an impression among its employees that their union activities were under surveillance by the Respondent and threatened employees with plant closure and discharge if they chose the Union as their bargaining representative.

About March 1995, the Respondent impliedly threatened employees with discharge if they chose the Union as their bargaining representative, promised employees benefits including a gas allowance, insurance, a savings plan, and an employee ownership plan if the employees rejected the Union as their bargaining representative, interrogated employees about their union activities, and informed employees that it would be futile for them to select the Union as their bargaining representative.

About April 1995, the Respondent created an impression among employees that their union activities were under surveillance by the Respondent, interrogated employees about their union activities, promised employees benefits including a wage increase, a gas allowance, insurance, a savings plan, and an employee ownership plan if the employees rejected the Union as their bargaining representative, impliedly threatened employees with discharge if they chose the Union as their bargaining representative, and informed employees it would be futile for them to select the Union as their bargaining representative.

About June 9, 1995, the Respondent threatened, and impliedly threatened, employees with discharge if they chose the Union as their bargaining representative.

About June 9, 1995, the Respondent terminated its employee Mary Taglia because the employees of the Respondent joined or supported the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

CONCLUSIONS OF LAW

1. By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By terminating Mary Taglia, the Respondent has been discriminating in the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by discharging Mary Taglia, we shall order the Respondent to offer her immediate and full reinstatement to her former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed, and to make her whole for any loss of earnings and other benefits suffered as a result of the discrimination against her. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful discharge, and to notify Taglia in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Anytime Plumbing Co., Chicago, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Promising employees benefits, including higher wages, a gas allowance, insurance, a savings plan, or an employee ownership plan, if the employees reject

Chicago Journeymen Plumbers' Local Union 130, U.A., as their bargaining representative.

(b) Creating the impression among its employees that their union activities are under surveillance by the Respondent.

(c) Threatening employees with plant closure or discharge, or impliedly threatening employees with discharge, if they choose the Union as their bargaining representative.

(d) Interrogating employees about their union activities.

(e) Informing employees that it would be futile for them to select the Union as their bargaining representative.

(f) Terminating its employees because its employees joined or supported the Union, or engaged in concerted activities, or to discourage employees from engaging in these activities.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Mary Taglia immediate and full reinstatement to her former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed, and make her whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, in the manner set forth in the remedy section of this decision.

(b) Remove from its files any and all references to the unlawful discharge, and notify Taglia in writing that this has been done.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Chicago, Illinois, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

²If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. March 15, 1996

William B. Gould IV, Chairman

Margaret A. Browning, Member

Charles I. Cohen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT promise employees benefits, including higher wages, a gas allowance, insurance, a savings plan, or an employee ownership plan, on the condition that the employees reject Chicago Journeymen Plumbers' Local Union 130, U.A., as their bargaining representative.

WE WILL NOT create the impression among our employees that their union activities are under surveillance by us.

WE WILL NOT threaten employees with plant closure or discharge, or impliedly threaten employees with discharge, if they choose the Union as their bargaining representative.

WE WILL NOT interrogate employees about their union activities.

WE WILL NOT inform employees that it would be futile for them to select the Union as their bargaining representative.

WE WILL NOT terminate our employees because our employees join or support the Union, or engage in concerted activities, or to discourage employees from engaging in these activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Mary Taglia immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed, and make her whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, in the manner set forth in the remedy section of this decision.

WE WILL remove from our files any and all references to the unlawful discharge, and notify Taglia in writing that this has been done.

ANYTIME PLUMBING CO.